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No. 927

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

PAUL W. PANCZKO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONER'S REPLY MEMORANDUM

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May It Please The Court:

We believe that on the face of the government's memorandum, petitioner is shown to be entitled not merely to certiorari, but to summary reversal as well. The government states its two points succinctly; we will be equally brief.

1. The government contends that the statute is not unconstitutionally vague because, "it is commonly known that tampering with the mail is a serious matter." (Gov't Mem. 3). It is, we submit, equally well known that conduct is punishable only if denounced by a statute in terms sufficiently specific to enable people of reasonable intelligence to know, by reading the statute, that they are breaking the law. Granted, it is a "serious matter" to tamper with the mails. But petitioner is not accused of tampering with the mails. He is accused of possession of two "mail keys * * * with the intent to unlawfully and improperly use" them. A common abhorence of tampering with the mails is no substitute for a constitutional guarantee. For it is also "commonly known" that a defendant is entitled to be informed of the nature and cause of accusation against him. *United States* v. *Five Gambling Devices,* 346 U.S. 441. This court said there, p. 452: "We think the Act does not have the explicitness necessary to sustain the pleadings which the government has drafted in these cases."

The government also suggests that petitioner's remedy was a Bill of Particulars (Gov't Mem. 4). The government neglects to consider that the petitioner moved for precisely that relief, and that his motion was denied (App. 2). Petitioner's modest request was for a Bill of Particulars showing wherein his intended use of the keys was unlawful. That motion was flatly denied (App. 3). The government's assertion that a Bill of Particulars would have solved petitioner's dilemma, is a concession which might have been more appropriate in the trial court.

2. It was our second contention that defendant should have been discharged because the evidence was insufficient to convict. The government replies, impliedly, that we

are in error—that the evidence was sufficient to convict, but merely insufficient to convict the defendant on trial. The distinction seems a bit delicate in view of the stakes involved.

The government pointed out that had the trial court ruled correctly on the admission of the evidence, the keys would have been excluded unless the government had called additional witnesses. This assertion is of peripheral relevance in the absence of assumption that further evidence was in fact available. But there can be no question that if the trial court had ruled correctly on defendant's motion for acquittal at the close of the case, the government's conjectural additional witnesses would have been of no value. The trial court denied petitioner's motion for acquittal because the government convinced that court, erroneously, that the evidence was sufficient. Had the government's present submission been made on the hearing of defendant's motion for acquittal, the defendant would certainly have been acquitted. What the government in fact suggests to your Honors is that its two errors should cancel each other. We believe nothing more need be said.

For the foregoing reasons, petitioner now prays that this court grant both certiorari and summary reversal, directing the petitioner's acquittal.

Respectfully submitted,

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